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10/699,942

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EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/699,942 | | HAGGERTY ET AL. | |
| | Examiner | | Art Unit | |
| | VIREN THAKUR | | 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/26/04, 8/6/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “21” and “23” on page 5 paragraph 23 of the specification. It is noted that item 23 is used for the film strip but item “20” is also used to denote the film strip. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: “24” on figure 6. It appears that 24 has also been used to label the part which has already been labeled with 28. It is further unclear as to what item 110 in figure 5 is referring. It appears that the line connecting 110 is drawn to the stack of film strips.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 10 recites the limitation “wherein said has a plurality of...” The claim is unclear as to which element has a plurality of parallel elongate indentations on the bottom surface.

Claim 18 recites the limitation “further comprising a tray insert that constrains the film strips within the tray to prevent accidental spillage while leaving portions exposed for manual engagement during dispensing.” It is unclear as to how a tray insert can prevent accidental spilling when the only way to spill the contents is through an opening which is shared by both the container and the tray insert.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1794

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**5. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by
Altoids Strips.**

It is noted that the issued patent to Fagan et al. (US 7104419) included two samples of "ALTOIDS® Strips Cinnamon" as prior art which was included in the file. The examiner has retrieved the USPTO artifact file and photo copies of the exhibited samples are attached to this Office Action. The reference, as stated in the patent to Fagan et al., indicates that the ALTOIDS® Strips have been commercially available before March 29, 2002. Therefore, there is prima facie evidence in the form of the statement made in the patent to Fagan et al. and under 35 U.S.C. 102(b) that the claimed invention, was in public use or on sale in this country more than one year prior to the date of the instant application and therefore the ALTOIDS® Strips complies with the statutory bar requirements.

The ALTOIDS® Strips container, as shown in the image, comprises a tray having a front, rear, bottom wall and at least one side wall, with a slidably translatable lid and a plurality of edible strips within said container; said bottom wall having a transverse ridge configured so that a leading edge of a film strip may be forced upward above said at least one side wall by forcing said film strip forward toward the front of the container against the ridge while applying downward pressure thereto when said lid is in an open position (See image of front and back of Altoids Strips canister). Regarding instant claim 4, the ridge comprises an upwardly sloping ramp surface and a downwardly

Art Unit: 1794

sloping back surface. Regarding instant claim 5, the ridge comprises an indentation in the exterior of said bottom wall and a corresponding convexity on the interior thereof (See scanned bottom of canister), and wherein said indentation is manually engageable to facilitate application of longitudinal force to said tray to facilitate opening and closing (see detents on top cover). Regarding instant claim 6, the canister has stops and a detent for inhibiting displacement of said lid beyond fully opened position. Regarding instant claim 7, the detents and the stops require application of force to open. Regarding instant claim 8, the canister has a deep portion and a shallow portion with a sloped transition portion there between. Regarding instant claim 9, the ridge adjoins said sloped transition portion. Regarding instant claim 10, the bottom of the container has a plurality of parallel elongate transverse indentations formed on its bottom surface at said deep rear portion. Regarding instant claim 12, the lid is shown as having a protrusion having a direction indication, which is capable of facilitating longitudinal application of force and indicating the appropriate direction of movement of the lid. Regarding instant claim 14, the lid has rolled rim portions which roll through arcs of 180 to 360 degrees.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1794

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1,2,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storz (US 20030106900) in view of Lin et al. (US 4941591) and Duell et al. (US 2582821).

Regarding claim 1, Storz teaches a tray having a front, rear and bottom wall and side walls and a sliding lid (See Figure 6, for instance, and edible film strips within the container (paragraph 0001 and 0032). Storz also teaches that with the lid in the open position, pressure is applied to the lid, thus creating friction between the strip and the lid so that when moving the lid into the closed position, the edible strip would be forced forward and dispensed from the container (paragraph 0004 and 0007 and 0008).

Claim 1 differs from Storz in specifically reciting a transverse ridge which forces the strip upward.

It is noted however, that Storz teaches an inclined portion 18, which serves the same purpose as that of a ridge, which is to act as a guide to push out the edible strips upon dispensing (paragraph 0035). Even further, Lin et al. is cited as further evidence that it has been conventional in the art to use a ridge for the purpose of guiding a thin

sheet to be dispensed (see figure 5). Duell et al. is similarly cited for teaching wherein ridges (Items 19 and 22) are used to dispense an item from a container. Therefore to use an inclined ridge set apart from the outer wall as opposed to an inclined wall for the equivalent purpose of guiding the edible film out of the container would have been an obvious matter of choice and/or design, which would not have provided a patentable feature over the prior art.

Claim 2 differs from the combination of the prior art in specifically reciting wherein said ridge is adjacent to said front wall and spaced therefrom. It is noted however that the combination of Storz and Lin et al. teach using an inclined portion to facilitate the dispensing of a single sheet of a film product. Therefore, whether the ridge was a part of the front wall or was spaced therefrom would not have provided a patentable feature over the prior art since the prior art incline and ridge perform a similar function for achieving the similar result of facilitating removal of a film strip.

Claim 4 specifically recites the particular structure of the ridge, which has been taught by the combination of Storz and Lin et al. It is noted that in both the Storz reference and the Lin et al. reference, that the film strips are not overlying the ridge.

9. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1,2,4 above, and in further view of Offerman et al. (US 20040217116) and Mills (US 2295747).

Claims 6-7 differ from the combination of the prior art in reciting comprising a detent and one or more stops on the lid to inhibit displacement of the lid beyond the fully opened position.

Offerman et al. is cited to teach stops and a detent (see figure 10) for this same purpose. Mills similarly teaches stops to keep a sliding lid closed. Since Storz teaches using a slidable lid, it would have been obvious to the ordinarily skilled artisan to use stops and a detent for the purpose of preventing the lid from sliding off and also to secure the lid with the tray in a closed position.

10. Claim 8-9, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 6-7, above and in further view of Haggerty et al. (D484409).

Claim 8 differs from the combination of the prior art in specifically reciting wherein said tray comprises a deep rear portion, a shallow front portion and a sloped transition portion there between.

Haggerty et al. teaches that it has been conventional in the art to shape a container with a slidable lid with a deep rear portion with a sloped transition portion. Therefore to provide a shape to the container to have a deep portion and a shallow portion with a slanted transitional portion there-between would have been an obvious matter of design choice, since the art teaches that such shapes have been conventional in the art.

Regarding claim 9, it is noted that the combination of the prior art teaches the shape of the container and the ridge. Therefore, to position the ridge at the sloped transition portion would have been obvious for the purpose of facilitating removal of the film strips.

Regarding claims 19 and 20, the references as applied above teach the tray with a slidable lid with a ridge for facilitating dispensing of edible strips.

11. Claims 3, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 8-9 above, and in further view of Zaksenberg et al. (D485749) and Reifers et al. (US 3718274).

Claim 10 differs from the prior art in reciting wherein container comprises a plurality of parallel elongate transverse indentations formed in its bottom surface at the deep end rear portion to provide concave regions for manual engagement to facilitate opening and closing and corresponding convex interior ribs supporting said film strips.

It is noted that Storz, in paragraph 00430 and 0044), and Duell et al. (figure 1, item 15 and page 2, left hand column, line 73 to right hand column line 2) teach that indentations have been conventional in the art for the purpose of facilitating gripping. Zaksenberg et al. similarly teaches providing indentations on the bottom of the container, which have been well established to facilitate gripping of the container (See figure 5).

Reifers et al. teach the indentations on the bottom of a container, the convex portions used to support a food product thereon and which also form concave portions

Art Unit: 1794

underneath the container. Such ribs also provide additional support and rigidity for the container. Since Zaksenberg et al. and Duell et al. teach that such ribs have been well known in the art to be used for facilitating frictional engagement, and since Reifers et al. teaches providing said ribs with a convex portion to support the food and a concave portion, It would have been obvious to one having ordinary skill in the art to provide indentations that provide both a convex portion for supporting the food and concave portion for gripping, since the art teaches that this has been conventional in the art. It is further noted that since the combination of the prior art teaches a sliding lid container, that to use ribs on the bottom portion of the container would not only have provided support but would also have provided additional support to the container. Since such a container would have been constantly opened and closed, such a modification would have been obvious for providing increased strength to the container. It is further noted that applicant discloses on page 8, paragraph 31 of the specification that the concave indentations are used to support the stack of strips and may reduce heat transfer to through the bottom wall. To raise the contact surface of the food from the bottom of the container has been a well known means for preventing heat transfer, since there is less contact with the bottom surface of the container and since the ridges facilitate the passage of air to further reduce the amount of heat in contact with the food product. To therefore use ridges such as that of the prior art for support and minimizing the transfer of heat to the food product would not have provided a patentable feature over the prior art.

Regarding instant claim 11, Mills teaches that it has been conventional in the art to make slide cover containers from sheet metal (page 1, right hand column, lines 1-2). Offerman et al. teach that it has been conventional in the art to use steel for sliding cover containers (paragraph 0027). It is further noted that tin, aluminum and steel have been well known in the art to be used to make metal container and thus the particular conventional material of construction would have been an obvious result effective variable routinely determined depending on the properties desired for the metal container, and thus would not have provided a patentable feature over the prior art.

12. Claim 12-17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10-11 above, and in further view of Parker et al. (US 5878887).

Regarding instant claim 12, Duell et al. teaches a protrusion on the lid for facilitating application of longitudinal force to the lid. Duell et al. does not teach wherein the particular shape of the direction indicating protrusion. However, Parker et al. teach wherein the protrusion is a direction indicating protrusion (See Figure 1). Therefore to change the shape of the protrusion taught by Duell et al., would have been an obvious matter of choice for the purpose of indicating to the user the direction that the lid would open.

Claim 13 differs from the prior art in reciting a triangular shaped direction indicating portion and providing indicia on the lid.

It is noted that the prior art already teaches a triangular shaped direction indicating protrusion. Regarding the indicia, it is noted that providing additional embossed, or raised portions which form a particular design, would have the similar purpose of facilitating opening of the container. Therefore to shape the raised portions into particular shapes or indicia would not have provided a patentable feature over the prior art.

Regarding claim 14, Haggerty et al., Mills and Offerman et al. teach rolling the rim of the lid beneath the tray wherein the cylindrical surfaces are rolled through arcs of between 180 and 360 degrees, (See figures 7 and 8 of Mills; figure 6 of Haggerty et al. and figures 10 and 11 of Offerman et al.).

Claim 15 differs from the combination of the prior art in specifically reciting wherein the film strips have a lower coefficient of friction with each other than with a consumer's digit, however it is noted that the Storz reference teaches the similar function of pressing the sliding cover to achieve frictional engagement between the cover and the top edible film strip for the purpose of dispensing the film strip. Therefore to ensure that the frictional force between the strips is less than that of the cover or the consumer's digit and the top strip would have been obvious to the ordinarily skilled artisan.

Regarding claim 16, the combination of the prior art teaches the conventionality of using a hemmed front edge, as taught by Offerman et al. and Haggerty et al. Therefore to use a hemmed front edge would have been an obvious matter of choice.

Regarding claim 17, it is noted that the prior art teaches wherein the cover slides for the purpose of dispensing a film like material from the container. Claim 17 differs from the prior art in reciting wherein the tray and lid have a low friction surface treatments. Although the references do not teach this step, it is noted that the claims are directed to a product and not a process. In any case, in teaching that the cover must be associated with the tray but must also still be able to consistently slide from an open to a closed position, it would have been obvious to have used a treatment to lower the friction between the lid and the tray so ensure smooth operation of the dispensing container.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10-11 above, and in further view of Nishimura (US D465729).

The combination of the prior art is silent in teaching wherein the ridge comprises an indentation on the exterior of said bottom wall and a corresponding convexity on the interior thereof and wherein said indentation is manually engageable to facilitate application of longitudinal force to said tray to facilitate opening.

Nishimura has been cited to teach that the inclined portions of the references cited above have been well known to further include an indentation underneath (See Figures 7 and 8) of sliding cover containers. It is noted that combination of references, including Storz, already teaches the concept of sliding open a lid, pressing down on the lid for frictional engagement with an edible film and then closing the lid to dispense the

edible film. Whether the user performs this function with one hand is clearly based on the abilities of the user. In any case, Zaksenberg et al. and Duell et al. have been relied on to teach protrusions and indentations used to facilitate opening of a sliding cover container. Therefore to include this indentation would have been an obvious matter of choice for the purpose of further providing additional elements onto which a consumer can grip the container for the purpose of facilitating opening and closing of the container.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 12-17, above and in further view of Dunning (US 0949223) and Bemis (US 1323442).

Claim 18 differs from the combination of the prior art in specifically reciting wherein the film strip product comprises a tray insert that constrains the film strips within the tray to prevent accidental spillage while leaving portions exposed for manual engagement during dispensing.

It is noted that Dunning, on lines 8-13 teaches a container (figure 4, item 9) which comprises an insert tray (figure 1) for the purpose of providing controlled release of a product. In this case the insert tray facilitates the dispensing of a match one at a time (page 1, lines 8-13). Similarly, Bemis teaches an insert into a metal housing, which allows for the dispensing of cigarettes one at a time (page 1, lines 12-19). It is noted that based on the container and the insert, which is placed into the container, that the product contained within the insert tray is constrained for the purpose of controlled

dispensing; thus preventing accidental spilling of the product. By dispensing the item one at a time, the spilling of the product would also have been prevented.

Based on these teachings, to use a controlled dispensing mechanism, such as an insert tray would have been obvious for the purpose of facilitating the dispensing of one of the edible film strips of the prior art combination while also preventing spilling.

15. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 12-17 above, and in further view of Stevenson (US 1378294).

Claim 18 differs from the combination of the prior art in specifically reciting wherein the film strip product comprises a tray insert that constrains the film strips within the tray to prevent accidental spillage while leaving portions exposed for manual engagement during dispensing.

Stevenson teaches using a spring metal clip (page 1, lines 43-48) for the purpose of dispensing thin strips of paper. On page 1, lines 62-82, Stevenson teaches wherein the spring metal securely holds the business cards. The use of the spring clip in combination with the shape of the container secures the stack of business cards while also preventing spillage of the contents from the container, while still providing access to the stack of business cards. Therefore, the spring clip provides a similar function to that of the insert tray in that it secures the stack of business cards into the container. To therefore use another means, such as an insert tray to perform the similar function would have been an obvious matter of choice to the ordinarily skilled artisan.

Art Unit: 1794

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./

Examiner, Art Unit 1794

/Steve Weinstein/

Primary Examiner, Art Unit 1794